IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10675 OF 2004

Bombay Mercantile Co-op.
Bank Limited. ... Petitioners

Vs.

M/s. Cine Traders Exhibitors ... Respondents

Mr. P.S. Dani for the petitioners.

Mr. P.I. Vakil for the respondents.

CORAM: SMT. RANJANA DESAI, J.

DATED: 25TH JANUARY, 2005.

P.C.:-

1. The petitioners are the original defendants. The plaintiffs filed a suit against the defendants for possession of the suit property. The main contention of the plaintiffs was that the defendants had lost the protection under the Maharashtra Rent Control Act, 1999 in view of section 3(1)(b) thereof. The trial court decreed the suit holding that the defendants had lost the protection under the Maharashtra Rent Control Act, 1999. An appeal was carried from the said judgment and decree. The appellate court confirmed the said finding of the trial court. The defendants have challenged the said judgments.

2. I have heard Mr. Dani, the learned counsel appearing for the petitioners. Mr. Dani has challenged the constitutional validity of section 3(1)(b) of the

Maharashtra Rent Control Act, 1999. He submitted that certain petitions challenging the constitutional validity of the said section are pending before the Supreme Court. Mr. Dani further submitted that the grievance of the defendants was that the shop premises as well as open space were let out to the defendants. However, both the courts below have wrongly held that only the shop premises were let out to the defendants. Mr. Dani further contended that an objection was taken that since the defendants are a Co-operative Society, notice under section 164 of the Maharashtra Co-operative Societies Act was a must. It was contended that the acquisition of the premises is a part and parcel of the business of the defendants and, therefore, the present litigation was, in fact, touching the business of the defendants and, hence, the said notice was a must. He submitted that the courts below have wrongly held that this litigation is not touching the business of the defendants.

3. I find no substance in the submissions of Mr. Dani. So far as section 3(1)(b) is concerned, this court has upheld its constitutional validity. Merely because certain matters are pending in the Supreme Court, the courts below cannot stay their hands particularly when this court has held that section 3(1)(b) is constitutionally valid. So far as the finding of fact that only the shop premises were let out to the defendants is concerned, I find that it is unassailable and no interference is called for with it by this court

in its writ jurisdiction. So far notice under section 164 of the Maharashtra Co-operative Societies Act, 1960 is concerned, that point has already been covered by a decision of this court in C.R. Marconi v. Madhav Co-operative Housing Society Limited, 1985 (2) BCR 357 wherein it is held that in case of a bank, acquisition of premises cannot be called as part and parcel of its business. Both the courts have rightly upheld the plaintiffs' contentions. Hence, no interference is called for.

4. At this stage, Mr. Dani says that interim order may be continued for a period of eight weeks. The learned counsel for the defendants objects. In the circumstances of the case, the interim order is continued for a period of eight weeks. During the period of stay, the petitioners shall not alienate, encumber or create any third party rights in the suit property and on expiry of the said period, possession of the suit premises be handed over to the respondents unless ofcourse in the meantime, the petitioners get a favourable order from the Supreme Court.

5. All concerned to act on ordinary copy of this order duly authenticated by the Sheristedar of this court.

6. Petition is disposed of in the aforestated terms.

(SMT. RANJANA DESAI, J.)